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24 UNITED STATES DISTRICT COURT
25 NORTHERN DISTRICT OF CALIFORNIA

26 No: CV07-03087 MMC

CARL P. McDONOUGH,
Plaintiff,

JOINT CASE MANAGEMENT
CONFERENCE STATEMENT AND
PROPOSED ORDER

v.

UNITED STATES OF AMERICA,
Defendant.

Date: 11/9/07
Time: 10:30 a.m.
Ctmm: 7, 19th Floor
450 Golden Gate Avenue
San Francisco
Judge: Hon. Maxine M. Chesney

The parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as its Case Management Order in this case.

I. **JURISDICTION AND SERVICE.** This action arises under the Federal Tort Claims Act, 28 U.S.C. §2671 *et seq.*, and jurisdiction of the Court arises under 38 U.S.C. §1346. The only defendant, the United States of America, has been served.

II. **FACTS.** Plaintiff Carl P. McDonough is the sole survivor of Carl A. McDonough, deceased, father of the plaintiff. Decedent was a patient at the Livermore Veterans Administration Skilled Nursing Facility between March, 2005, and November, 2005. Decedent was under care for multiple medical conditions, which included a prior mechanical heart valve surgery and a CVA (cerebral vascular accident). Decedent's care included ongoing administration of the anticoagulant drug Cumadin, also known as Warfarin. On or about October 6, 2005, decedent's Cumadin order expired, and was not renewed. His blood thinners were discontinued. Decedent suffered a major embolic CVA in early November, 2005, resulting in his death on November 19, 2005.

The principle disputed factual issues are as follows: (1) Whether the defendant and its employees were negligent in the discontinuation of decedent's Cumadin, and whether or not defendant was negligent in the policies, procedures, and protocols of the Livermore VA-SNF which allowed the discontinuation of decedent's anticoagulant therapies; (2) Whether or not said negligence was a substantial factor in decedent's death; and (3) The nature and extent of damages suffered by plaintiff.

III. **LEGAL ISSUES.** Negligence, Causation, and Damages.

IV. **MOTIONS.** There are no pending motions. No motions are anticipated at this time, pending future discovery.

V. **AMENDMENT OF PLEADINGS.** None anticipated unless additional survivors or plaintiffs are identified.

VI. **EVIDENCE PRESERVATION.** At this time there are no issues of evidence preservation that have arisen.

VII. DISCLOSURES. Plaintiff has provided decedent's medical records from Livermore VA-SNF, his own birth certificate, decedent's death certificate, photographs of decedent taken during his lifetime, and documentation of the economic losses sustained, to the defendant through the administrative claims process. No initial disclosures have formally been made. The parties stipulate to initial disclosures pursuant to Fed. R. Civ. Proc. 26 being exchanged on November 23, 2007.

VIII. DISCOVERY. No discovery has been undertaken to date. The parties propose the following discovery plan: Defendant to depose plaintiff and to propound written discovery after CMC. Plaintiff intends to serve written discovery on policies and protocols, and subsequently depose some health care and supervisory personnel from the VA. The parties see no need for limits in view of the limited discovery anticipated.

IX. CLASS ACTIONS. Inapplicable.

X. RELATED CASES. None. The possibility of a claim by an estranged survivor of decedent is recognized.

XI. RELIEF. Plaintiff seeks damages in the amount of \$350,000.00, representing \$250,000.00 in non-economic damages as limited by California law, and \$100,000.00 in economic damages for loss of economic support, based upon decedent's anticipated life expectancy and his monthly contribution to plaintiff's household expenses.

XII. SETTLEMENT AND ADR. The parties request assignment of a mediator through the Court's ADR process.

XIII. CONSENT TO MAGISTRATE JUDGE. The defendant has declined to consent to a Magistrate Judge for trial.

XIV. OTHER REFERENCES. None applicable.

XV. NARROWING OF ISSUES. Not applicable.

XVI. EXPEDITED SCHEDULE. Not Applicable.

XVII. **SCHEDULING.** Plaintiff proposes the following dates for this matter:

1. Exchange of Initial Disclosures 11/23/2007
2. Designation of Experts 4/11/2008
3. Fact Discovery Close 4/30/2008
4. Expert Discovery Close 5/27/2008
5. Hearing of Dispositive Motions 6/25/2008
6. Pre-Trial Conference 7/11/08
7. Trial 7/28/08

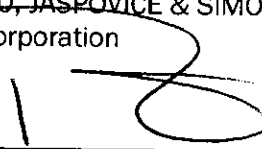
XVIII. **TRIAL.** By statute, this case is a Court Trial. Expected length of trial is 3-4 days.

XIX. **DISCLOSURE OF NON-PARTY INTERESTS.** Plaintiff has filed a certification of no interests.

XX. **CERTIFICATION.** Signing counsel to this Joint Statement hereby certify that neither party knows of any persons, firms, partnerships, corporations, or other entities who have either (1) a financial interest in the subject matter in controversy or any party to the proceeding; or (2) any other kind of interest that could be substantially affected by the outcome of this proceeding.

Dated: 11-2-07

FURTADO, JASPOVICE & SIMONS
A Law Corporation

By 
RICHARD J. SIMONS
Attorneys for Plaintiff
CARL P. McDONOUGH

Dated: 11-2-07

SCOTT N. SCHOOLS
UNITED STATES ATTORNEY

By /S/
JONATHAN U. LEE
Attorneys for Defendant
UNITED STATES OF AMERICA

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CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order are hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition the Court orders:

Dated: _____

THE HONORABLE MAXINE M. CHESNEY
United States District Court Judge

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